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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

MICHAEL CHAPMAN et al., Plaintiffs and Appellants, v. ALLIED WASTE INDUSTRIES et al., Defendants and Respondents.	A122668 (Napa County Super. Ct. No. 26-36700)

Michael Chapman (Chapman) and his wife Leslie Chapman (collectively referred to as plaintiffs) appeal from the judgment entered on the jury's verdict in favor of Allied Waste Industries (Allied) and Regional Disposal Company (Regional) (collectively referred to as defendants). Plaintiffs claim the trial court erred in denying their motion to strike a portion of an expert witness's testimony, and in denying two of their motions in limine. They also appeal the court's denial of their motion for new trial. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Accident and Pre-trial Proceedings

On October 29, 2006, Chapman was injured in a fall that he suffered while unloading debris from his truck at the Devlin Road Recycling and Transfer Facility in American Canyon (Facility). At the Facility, patrons would park their vehicles in the "self-haul" area to unload their trash. Adjacent to the self-haul area was a lower level, called the "tipping floor," onto which the waste was thrown. There was a raised sidewalk

abutting the tipping floor, designed to prevent vehicles from approaching too close to the edge. The sidewalk also functioned as a platform for patrons to unload their trash and drop it to the tipping floor. The sidewalk was 9 feet 10 inches wide.

On February 16, 2007, plaintiffs filed a complaint for negligence, premises liability, and loss of consortium against defendants. In the complaint, plaintiffs alleged Chapman was pulling a window frame out of his truck when it broke loose, causing him to stumble backward and fall approximately six feet down to the tipping floor where he landed on his back. The complaint further alleged he sustained severe injuries, including a fractured vertebrae in his back. Plaintiffs claimed the Facility was in a dangerous condition due to the absence of a safety barrier, such that if a person working on the platform were to stumble or step backward there would be nothing to prevent him or her from falling over the edge. Plaintiffs sought both compensatory and punitive damages.

On May 18, 2007, plaintiffs served a set of general form interrogatories on defendants with boxes checked before each question they wanted answered, including Interrogatory No. 15.1, which asked defendants to identify "each special or affirmative defense in your pleadings." They also requested responses to Interrogatory Nos. 16.1 to 16.10, which relate to defenses in personal injury claims.

On May 23, 2007, the trial court granted defendants' motion to strike the punitive damages allegation from plaintiffs' complaint.

On June 29, 2007, Allied served its responses to the form interrogatories. To Interrogatory No. 15.1, Allied responded: "Not applicable. No Answer has yet been filed and therefore, no affirmative defenses have yet been asserted." With respect to Interrogatory Nos. 16.1 to 16.10, Allied stated: "Objection. As noted in the introductory instructions to the Form Interrogatories, Section 2 'Instructions to the asking Party,' Section (d), the Interrogatories in Section 16 are not appropriate to ask at this time."[1]

[1] The instructions referenced by defendants state: "The interrogatories in section 16.0, Defendant's Contentions—Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages."

On July 20, 2007, plaintiffs filed a first amended complaint (FAC). The FAC repeated the factual allegations contained in the original complaint and omitted the allegations relating to punitive damages.

On July 30, 2007, defendants filed their answer to the FAC. Among their affirmative defenses, defendants alleged the FAC failed to state facts sufficient to constitute a cause of action and that Chapman's own fault had caused and contributed to the damages complained of.

On August 31, 2007, Regional served the following response to Interrogatory No. 15.1: "The affirmative defenses that were asserted were made on advice of our attorney. It is our understanding that they were interposed to protect our legal rights. There are inadequate facts developed through discovery and investigation to this point to respond in meaningful detail to this interrogatory. Investigation and discovery are continuing." Regional gave the same response that Allied had previously given with respect to Interrogatory Nos. 16.1 to 16.10.

In response to plaintiffs' request for supplemental answers to interrogatories, served on November 14, 2007, both defendants stated "This responding party does not have any supplemental responses to Responses and Amended Responses previously served in this matter."

II. The Motions in Limine

On April 25, 2008, plaintiffs submitted their motion in limine No. 2, seeking an order precluding defendants from asserting *any* affirmative defenses. The motion was based on the ground that defendants had failed to adequately respond to Interrogatory No. 15.1. Motion in limine No. 3 sought to prevent defendants from asserting any defenses based on Interrogatory Nos. 16.1 to 16.10. Motion in limine No. 7 sought an order forbidding defendants from eliciting at trial any opinions that had not been expressed in their experts' depositions.

On June 6, 2008, the trial court denied motions in limine Nos. 2 and 3, finding that defendants did not have any substantive information at the time they served both their initial and supplemental responses. Motion No. 7, which was unopposed, was granted.

III. Plaintiffs' Case at Trial

A jury trial commenced in June 2008. Chapman testified that on the day of the accident he was aware there was a six-foot drop at the edge of the self-haul platform. On that day, he had loaded the back of his pickup truck with yard waste, old wood, household trash, and a four-by-five foot aluminum window frame. The frame weighed approximately 30 to 35 pounds.

When Chapman arrived at the Facility, he backed his truck into a stall on the self-haul platform until his rear tires hit the sidewalk. After removing a few items from the truck bed and throwing them over the edge, he dropped the tailgate and grabbed the window frame. The frame was stuck, so he pulled harder and the frame split apart. He fell backward and landed on his rear end on the sidewalk, close to the edge of the platform. He was sitting upright when he landed, bent slightly at the waist. His momentum carried him backwards and he curled up as he fell onto the tipping floor, where he landed square in the middle of his back. Immediately upon impact the wind was knocked out of him and his back felt as though it were on fire. Paramedics were called and he was secured to a backboard and taken to the hospital.[2]

Chapman testified he was diagnosed as having sustained a compression fracture to his L1 vertebrae.[3] Initially, no surgery was done and he went back to light duty at his job on December 12, 2006. In the month prior to returning to work, he was prescribed Oxycontin and a muscle relaxer. By about April or May of 2007, he was working a full-time schedule and the pain in his back began to worsen. He stopped working in July 2007 to have back surgery. The surgery fused the T10, L1 and L2 vertebrae. At the time of trial, he was experiencing pain in his right leg and his back, though not at the surgical site. He had not been cleared to go back to work. He was told by his surgeon, Dr.

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[2] Plaintiffs' theory at trial was that defendants were negligent in removing certain safety barricades and that this negligence caused Chapman to fall onto the tipping floor. As we note below, the jury made an affirmative finding as to defendants' negligence, a finding they do not contest on appeal.

[3] The L1 vertebrae is located about five inches above the waist.

Kenneth Light, that the pain was the result of a prior disc injury that had been aggravated by the fall at the Facility.

Dr. Light is a physician who specializes in spinal surgery. He testified that the injury Chapman sustained when he fell at the Facility was a compression fracture of the anterior part of the L1 vertebrae. This type of injury occurs when there is a sudden weighting or compression to the front of the spine. In Chapman's case, the vertebrae above and the vertebrae below the site of the injury were pushed together by the impact of the fall, crushing the L1 vertebrae. Dr. Light opined the injury was caused by the fall at the Facility. He testified Chapman had told him the injury occurred when he was "unloading his truck and he fell over a ledge that was probably seven feet high."[4] With respect to the pain Chapman was presently experiencing, Dr. Light stated that Chapman's L5/S1 disc, which is the lowest disc in the spine, had shown signs of damage before the fall. This damage was related to a prior back surgery. In Dr. Light's opinion, the fall exacerbated the existing damage to the disc, causing Chapman to experience pain on a daily basis. Dr. Light opined that the pain at the L5/S1 level had been "unmasked" by the treatment of the vertebral fracture.

On cross-examination, Dr. Light testified that a compression fracture could occur if a person pulling something out of a vehicle were to fall on level ground on his or her seat while flexed in a bent-forward position. However, a 35-year-old man would be more likely to sustain such an injury following a six-foot drop, whereas a 75-year-old woman could easily sustain a compression fracture from a fall to level ground.[5] He also testified it was possible that Chapman's degenerative disc condition was the result of a natural aging process.

IV. Defendants' Case at Trial

Dr. Trigg McClellan testified regarding how axial-load compression fractures are sustained. Usually, such a fracture occurs when a person falls and lands on his or her feet

[4] The actual drop was five and a half feet.

[5] At the time of the incident, Chapman was 47 years old.

or rear end. If the person is flexed at the waist on impact, there will be more compression of the forward-facing portion of the spine. Dr. McClellan testified that a compression fracture would not result from a fall in which a person landed on his or her back. He also stated his opinion that the pain Chapman was experiencing in his right leg was not related to the accident, but was a result of a preexisting problem with the L5/S1 disc. His opinion was based on the fact that Chapman did not experience leg pain until over a year after the fall. He also stated that axial-loading falls do not cause injury to spinal discs.

Dr. McClellan's testimony on direct concluded with the opinion that Chapman sustained the compression fracture when he landed on his seat on the self-haul platform, and not when he landed on his back on the tipping floor below. Plaintiffs' counsel did not immediately object to this testimony. On cross-examination, counsel challenged the witness, confronting him with his deposition testimony in which he had stated that the compression fracture was the result of a six- or seven-foot fall. Counsel then proceeded to contest the witness's opinions regarding the cause of Chapman's leg pain and the treatment undertaken by Chapman's physicians.

On redirect, Dr. McClellan clarified that at the time of his deposition he was unclear as to whether Chapman had landed on his seat or on his back. He testified he had been under the impression Chapman fell off the edge of the platform and landed on his rear end *after* the drop, not before. But after reviewing Chapman's trial testimony, McClellan came to the conclusion that the compression fracture occurred when Chapman landed on his bottom before he went over the edge.

After defendants rested their case, plaintiffs called Chapman back to the witness stand to "clear up" how he had landed when he fell. Chapman testified that he felt the pain in his back when he landed on the tipping floor, not when he hit the edge of the platform. He affirmed that he fell on his rear end at the edge of the platform *before* he landed on his back on the tipping floor.

Prior to closing arguments, the trial court denied plaintiffs' motion for directed verdict on the issue of liability. The court also denied defendants' motion for a directed verdict on the issue of causation. The later motion was based on the ground that the

compression fracture occurred when Chapman fell on his rear end on the platform, and not when he landed on the tipping floor.

The following day, plaintiffs moved to strike Dr. McClellan's testimony that the initial fall on the platform was the cause of the compression fracture. Plaintiffs' counsel argued that this testimony was "directly contradictory" to the expert witness's deposition testimony. The trial court denied the motion. In closing argument, defendants' counsel advocated to the jury that even if defendants were negligent for not placing a barrier at the edge of the platform, their negligence did not cause Chapman's injury because the fracture occurred before he fell over the edge.

V. The Verdict and Post-trial Motions

On June 20, 2008, the jury rendered its verdict, finding that defendants were negligent but that their negligence was not a substantial factor in causing plaintiffs' harm.

On June 23, 2008, notice of entry of judgment was filed.

On July 8, 2008, plaintiffs filed a motion for new trial and a motion for judgment notwithstanding the verdict. These motions were denied without a hearing on August 20, 2008. This appeal followed.

DISCUSSION

I. Standard of Review

Plaintiffs claim the trial court erred in denying their motion to strike Dr. McClellan's testimony. We review a trial court's evidentiary ruling for abuse of discretion. (*Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431.) A ruling on a motion to exclude or strike testimony, "even if erroneous, is not reversible absent a miscarriage of justice." (*Easterby v. Clark* (2009) 171 Cal.App.4th 772, 783.) A miscarriage of justice should be declared only if, after examining the record, the reviewing court determines that " 'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citation.]" (*Ibid.*)

II. The Motion to Strike Dr. McClellan's Trial Testimony

A. Waiver

Defendants claim "plaintiffs waived their objection to Dr. McClellan's testimony by withholding their motion to strike until the end of the trial."

Evidence Code section 353 provides: "A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears of record an objection to or a motion to exclude or to strike the evidence *that was timely* made and so stated as to make clear the specific ground of the objection or motion; and [¶] (b) The court which passes upon the effect of the error or errors is of the opinion that the admitted evidence should have been excluded on the ground stated and that the error or errors complained of resulted in a miscarriage of justice." (Italics added.)

Courts have stated " 'The rule is settled that where a defendant deliberately permits evidence to be given without objection in the first instance and then moves to strike it out on grounds readily available at the time the evidence was offered, he waives such objections to the reception of the evidence. [Citation.]' [Citation.]" (*People v. Hoe* (1958) 164 Cal.App.2d 502, 507.) " 'A party is not permitted to remain silent when evidence is offered, with the privilege of accepting it if favorable and afterwards moving to strike it out if it is against him, but he must exercise his right of objection at a proper and reasonable time.' [Citation.]" (*People v. Williams* (1957) 148 Cal.App.2d 525, 533.) This rule applies to both criminal and civil cases. (*Ibid.*)

We agree with defendants that plaintiffs' motion to strike, coming a full day after the witness testified, was belated. However, we also note defendants did not raise the issue of timeliness when the motion to strike was made. "Generally, failure to raise an issue or argument in the trial court *waives* the point on appeal." (*Kolani v. Gluska* (1998) 64 Cal.App.4th 402, 412.) In any event, even if plaintiffs did not waive their right to object to Dr. McClellan's testimony, we would find the claim of error fails on the merits.

B. The denial was not an abuse of discretion

Plaintiffs assert that Dr. McClellan's testimony violated the order granting their motion in limine No. 7, which precluded defendants "from eliciting at trial opinions of defense experts which were not expressed at the depositions of those experts." Specifically, they claim the witness was precluded from testifying that Chapman's injury resulted from anything other than his fall to the tipping floor. They base this claim on a truncated representation of the following exchange which occurred at the witness's deposition:

"Q: Okay. What do you understand about the mechanism of injury for Mr. Chapman?

"A: He was apparently unloading a truck. *He was pulling a window out the back of the bed and fell backwards approximately seven feet and landed on his bottom.* There is a little uncertainly [*sic*]. He said in the deposition, I think, that he landed flat on his back, he said once on his bottom, and then the attorney asked, 'Where did you hit first,' or something. *And I think he said the middle of his back, which makes no sense. You don't usually break your back if you land flat on your back. He probably landed on his bottom, which produces an axial load of the spin.*

"Q: Axial meaning straight down the spine?

"A: Correct.

"Q: And that causes a compression fracture?

"A: Correct.

"Q: Okay. Are you – do you have any opinion that his injury incurred – the injuries that you attributed to this incident, that they were caused by that six-foot fall as opposed to something else?

"A: Can you restate that?

"Q: Yeah. It's your – let me just state it this way. *I am understanding that your opinion is that the compression fracture and the ligamentous injury we talked about were the result of his fall some six or seven feet; is that correct?*

"A: *That is correct.*

"Q: *And it is your opinion from your review of the records, your review of his deposition, and your knowledge of how compression fractures occur, that he likely landed in a seated position when he hit the ground; is that right?*

"A: *Correct.*" (Italics added.)

In arguing that Dr. McClellan's testimony at trial violated motion in limine No. 7, plaintiffs focus solely on the witness's affirmation that "the compression fracture and the ligamentous injury we talked about were the result of his fall some six or seven feet." In doing so, they ignore his testimony that he believed Chapman must have landed on his rear end.[6] As noted above, the witness testified at trial that Chapman's injury occurred when he fell on his rear end and not when he landed on his back. His initial indication that the injury was caused by the six-foot fall was clearly based on his impression that Chapman had landed on his seat when he fell to the tipping floor.[7] We thus disagree with plaintiffs' contention that McClellan's trial testimony was "directly contrary" to his deposition testimony.

Plaintiffs rely on *Bonds v. Roy* (1999) 20 Cal.4th 140, in support of their argument that McClellan's testimony was improper. In *Bonds*, the Supreme Court held that under Code of Civil Procedure former section 2034, "which provide[d] for discovery of expert witness information, a trial court may preclude an expert witness from testifying at trial on a subject whose general substance was not previously described in an expert witness declaration." (*Bonds, supra*, at p. 142.) In that case, an expert witness was deemed precluded from testifying regarding the standard of care because the plaintiff's expert declaration had stated he would address the issue of damages only. The Supreme Court

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[6] At one point during his deposition, Chapman testified as follows: "I grabbed the window frame and I pulled it. It started to come, but it just, you know, wasn't coming all the way. Then I gave it a pull and it came apart. Then I started falling back, and I hit right at the edge. I landed on my butt right at the edge. And I didn't stop. I kept going back. I was afraid I was going to hit my head. It was like slow motion once I landed on my butt. I knew I was going over, and I was afraid I was going to hit my head."

[7] The record on appeal contains only two, nonconsecutive pages from Chapman's deposition transcript. We have denied plaintiffs' request for judicial notice (filed Sept. 14, 2009) of an additional page of Chapman's deposition.

found that, under the relevant discovery statutes, the expert's testimony was properly limited to that which had been disclosed in his expert declaration. (*Id*. at p. 149.) In the present case, plaintiffs do not contend the general substance of Dr. McClellan's testimony was not disclosed to them by his expert witness declaration.

Jones v. Moore (2000) 80 Cal.App.4th 557, another case relied upon by plaintiffs, also does not support their contentions. In *Jones,* an expert witness in a legal malpractice case testified consistent with his deposition concerning the ways in which the defendant's conduct during a specific time period fell below the applicable standard of care. The trial court then prevented plaintiff from questioning the expert regarding the defendant's conduct during a different time period, finding the question called for an opinion that was outside the scope of the expert's deposition. (*Id.* at p. 564.) The appellate court affirmed, noting that while the plaintiff's expert witness declaration arguably was broad enough to encompass the line of questioning, he had expressly stated in his deposition that he would notify defense counsel before offering any new opinions. "Under these circumstances, [the] exclusion of testimony going beyond the opinions he expressed during his deposition was justified." (*Id.* at pp. 564–565.)

Here, Dr. McClellan's deposition testimony and his trial testimony were consistent with respect to the mechanics of how Chapman sustained his compression fracture. While it is true that McClellan had not previously stated that the injury occurred before Chapman fell to the tipping floor, he did not render an opinion that was materially distinct from the opinion he gave at his deposition, namely, that the injury could only have been caused by a fall to the buttocks. We thus disagree with plaintiffs' contention that Dr. McClellan "executed a complete U-turn and gave a totally unexpected new opinion against which plaintiffs could not have protected themselves."

This case is thus analogous to *DePalma v. Rodriguez* (2007) 151 Cal.App.4th 159, in which an expert witness's trial testimony was deemed to have been within the scope of his deposition testimony. That case involved injuries allegedly arising from an automobile accident, in which a biomechanic expert had testified at his deposition that, based on the force of the impact on the plaintiff's vehicle, he would not have expected

the plaintiff to have suffered "any" injury. (*Id.* at p. 162.) At trial, the same expert testified specifically concerning the unlikelihood of injury to the plaintiff's knee and shoulder. (*Id.* at pp. 162–163.) The appellate court stated: "[T]he instant case is quite different from the situation [of the legal malpractice expert] in *Jones,* where testimony excluded by the trial court involved an entirely new area of testimony not previously disclosed. Here, [the expert's] trial testimony constituted merely an expanded description and interpretation of the conclusions stated in his deposition testimony." (*Id.* at p. 165.) The same rationale applies to the present case. In sum, we conclude the trial court did not abuse its discretion in refusing to grant plaintiffs' motion to strike.

III. The Denial of Motions in Limine Nos. 2 and 3

Plaintiffs claim the trial court erred in denying their motions in limine Nos. 2 and 3. As discussed above, these motions sought to bar defendants from asserting any affirmative defenses based on their alleged failure to substantively respond to Interrogatory No. 15.1, as well as any affirmative defenses or evidence regarding the issues framed by Interrogatory Nos. 16.1 to 16.10. The trial court denied the two motions in limine on the ground that the burden is on the party seeking discovery to ask for supplemental responses as allowed by Code of Civil Procedure section 2030.070. On appeal, plaintiffs claim they were unfairly lulled into complacency by defendants' counsel's alleged refusal to disclose that they would assert a defense based on a lack of causation.

The propounding party generally has the burden of verifying the correctness of his opponent's earlier answers to interrogatories. He or she does this by serving supplemental interrogatories shortly before trial. (Code Civ. Proc., § 2030.070.) A party may propound supplemental interrogatories twice before, and once after the initial setting of the trial date. (Code Civ. Proc., § 2030.070, subd. (b).) On motion for good cause, the court may grant leave to a party to propound additional supplemental interrogatories. (Code Civ. Proc., § 2030.070, subd. (c).) While plaintiffs did serve a set of supplemental interrogatories prior to the first trial date, which had been set for January 14, 2008, there is no evidence in the record showing plaintiffs sought leave to serve a new set on

defendants prior to the second and actual trial date.[8] Thus, we conclude the trial court properly denied the two motions in limine.

We also note a party responding to interrogatories has no duty under California law to update his or her response upon the receipt of new information or to correct mistakes. (*Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1328.) Moreover, earlier answers do not bar the responding party from introducing evidence at trial that was discovered after the original answers were prepared. "Certainly, it should not be the law that interrogatories can be used as a trap so as to limit the person answering to the facts then known and to prevent him from producing subsequently discovered facts. . . . In fact, such answers would not even prevent production of facts now known to [the responding party] but not included in the answers, upon a proper showing that the oversight was in good faith." (*Singer v. Superior Court* (1960) 54 Cal.2d 318, 325.)

We also disagree with plaintiffs' contention that defense counsel "purposely misled" both the court and opposing counsel. Defendants asserted in their answer that they would defend based on plaintiffs' failure to state a cause of action, and that Chapman's own conduct had caused or contributed to his injury. Thus, plaintiffs were on notice that causation would be contested. It does appear defendants' counsel did not advise plaintiffs' counsel they were going to assert Chapman's injuries occurred when he landed on the self-haul platform and not when he fell over the edge. However, as discussed above, it was only after Chapman testified at trial that defendants became aware of the two-stage fall. It is thus doubtful defendants could have disclosed this line of defense to plaintiffs before trial.

IV. The Denial of the Motion for New Trial

Plaintiffs claim the trial court erred in denying their motion for a new trial, asserting they were unduly surprised by Dr. McClellan's trial testimony. Generally, we

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[8] We observe the supplemental requests for interrogatories were served on defendants in November 2007, several months prior to Dr. McClellan's deposition, which was taken on April 17, 2008.

will not disturb the trial court's ruling on a motion for new trial unless the court has abused its discretion. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859.) When the court has denied a motion for a new trial (as distinguished from when it grants a new trial), we must determine whether the court abused its discretion by examining the entire record and making an independent assessment of whether there were grounds for granting the motion, and whether any error was prejudicial. (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 872.)

" 'Surprise' as a ground for a new trial denotes some condition or a situation in which a party to an action is unexpectedly placed to his detriment. The condition or situation must have been such that ordinary prudence on the part of the person claiming surprise could not have guarded against and prevented it. Such party must not have been negligent in the circumstances." (*Wade v. De Bernardi* (1970) 4 Cal.App.3d 967, 971; see also Code Civ. Proc., § 657, subd. (3).) Plaintiffs' arguments here are essentially the same as those already discussed above, namely that they were surprised when their lawsuit was defended based on "a total lack of causation between plaintiff's six-foot fall and his injuries" and when Dr. McClellan "change[d] his opinion on the key causation issue."

Consistent with our discussion above, we conclude the record does not reflect surprise sufficient to justify a new trial. Chapman's own trial testimony placed the axial-loading event at the self-haul platform, and not at the tipping floor. Knowing that Dr. McClellan would testify compression fractures are not caused by falls to the back, plaintiffs could reasonably have foreseen he would testify Chapman suffered the compression fracture on the platform. Thus, the "surprise" here could have been anticipated through ordinary prudence. We also note that the manner in which Chapman's fall occurred, including the initial impact on his seat, was entirely knowable to the plaintiffs. To the extent Dr. McClellan augmented his deposition testimony at trial, this should not have come as a surprise to plaintiffs as the opinion was a natural

outgrowth of Chapman's own testimony.[9] We thus see no error in the denial of plaintiffs' motion for new trial.

DISPOSITION

The judgment is affirmed.

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Dondero, J.

We concur:

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Marchiano, P. J.

_____
Margulies, J.

[9] *Richaud v. Jennings* (1993) 16 Cal.App.4th 81, also relied upon by plaintiffs, is also inapposite in that it concerns a statutory amendment to the expert witness disclosure statutes.